

Appl. No. 10/774,768
 Docket No. 9490
 Amdt. dated July 19, 2006
 Reply to Office Action mailed on May 1, 2006
 Customer No. 27752

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REMARKS

Claim Status

Claims 1 – 3, 5, 6, and 21 - 33 are pending in the present application. No additional claims fee is believed to be due.

Title Objection

The Office states the title of the invention is not descriptive. Applicant has amended the present specification to recite a new title of "ABSORBENT ARTICLE COMPISING A FLAP HANDLE THAT AIDS IN THE APPLICATION OF SAID ABSROBENT ARTICLE." Applicant asserts that in light of the amendment the rejection is now moot.

Rejection Under 35 U.S.C. § 102

Claims 1-3, 5-6, and 23-30 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Application Publication No. US 2002/0091368 to LaVon et al. (herein after "LaVon"). In support of the rejection of Claims 1-2 and 27, the Office states:

LaVon discloses a disposable absorbent article such as a diaper 20 (page 2, paragraph 0026) having belt zone 630 [belt zone is adjacent flap 620 in figure 7] comprising (a) a chassis having an absorbent core positioned between liquid pervious top sheet 22 and liquid impervious back sheet 24 . . . ; (b) at least one sidewall disposed adjacent the chassis that connects front region 32 to back region 34 and thus forming leg openings and a waist edge . . . ; said sidewall comprising an ear or panel (figures 1 and 3), and (c) wherein at least one handle is a flap 620 comprising a stratum/layered panel members . . . , wherein the flap forms a gap between the stratum and the chassis (figure 7), wherein the flap 620 is joined to the garment-facing surface of the article 600 by opposing longitudinal welds/fasteners 625 (page 13, paragraph 0115, lines 20-21) and is disposed proximate opposing distal longitudinal edges of the flap (figure 7), wherein the handle is disposed adjacent the sidewall (figures 7-8) and wherein the absorbent diaper is a pull-on garment such as training pants (page 1, paragraph 0010, lines 1-5).

The Office states, "The term (sic) 'welding' and 'welding means' as recited in claims 1, 30 and 33 is interpreted to include sonic sealing, heat sealing, pressure bonding, adhesive such as hook and loop, sewing, autogenous bonding and the like (see Specification page 6, lines 18-25). Applicant traverses the rejection.

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Applicant wishes to present a brief overview of LaVon. LaVon is directed to an absorbent core designed to move fluid from the crotch region to the front and/or rear ends of the article. *Abstract.* LaVon discloses that the absorbent core may comprise a non-removable absorbent core component in the crotch region and removable absorbent core components in the front or rear regions of the article. *Abstract.* In one embodiment as shown in Figure 7, an absorbent article (600) is shown having an opening (610) through which a back panel (430) may be removed or replaced. Paragraph [0115]. A flap (620) may secured over the opening (610) by suitable fasteners such as fasteners (625). Paragraph [0115]. LaVon does not teach a handle.

Applicant asserts that the Office has misconstrued the present claims and selectively reads and applies the teachings of LaVon. With regard to the construction of the present claims, the Office has construed the term "welding" (and presumably "welds") "to include sonic sealing, heat sealing, pressure bonding, adhesive such as hook and loop, sewing, autogenous bonding and the like." Applicant states that welding is done by "an adhesive, heat bonds, pressure bonds, ultrasonic bonds, dynamic mechanical bonds, or combinations thereof." Page 15, lines 5-6. Applicant does not include hook and loop fasteners or any other mechanical fasteners within the definition of "welding" or "weld," but the Office has construed "weld" to include hook-and-loop fasteners (which are not adhesives). Applicant points to the consistency of usage of the term "weld" versus the term "fastener" within the specification. For example, beginning on page 6, lines 25, suitable welding techniques include sonic sealing, heat sealing, pressure bonding, adhesive or cohesive bonding, sewing, and autogeneous bonding. However, in the same paragraph, Applicant distinguishes resealable fasteners as including "hook and loop fasteners, buttons, zippers, tab and slot, adhesives, co-adhesives and the like." Page 6, line 31 to page 7, line 1. Applicant appreciates that "the PTO must give claims their broadest reasonable interpretation, this interpretation must be consistent with the one that those skilled in the art would reach." *In re Cortright*, 165 F.3d 1353, 1358 (Fed. Cir. 1999). However, the broadest reasonable interpretation must be consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000). Applicant asserts that the Office has misconstrued "weld" to include fasteners which is inconsistent with the

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Docket No. 9490
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specification. As supported by the specification, Applicant has drawn a distinction between "weld" as used in the present application and "resealable fastener" as used in LaVon.

Applicant further asserts that the Office selectively applies and reads the teachings of LaVon. Specifically, Applicant's use of the term "weld" and LaVon's use of the term "fastener" would be readily recognized as different elements when interpreted in light of the full teachings of LaVon and the present application. In LaVon, fasteners (625) are used to secure the flap (620) over the opening (610). Paragraph [0115]. LaVon teaches that the opening (610) allows the back panel (430) to be extracted and replaced. Paragraph [0115]. Given that the flap (620) will be opened with extraction of a used back panel (43), the fasteners (625) must separate upon application of a force to the flap (620). Otherwise, the opening (610) would not be accessible for removal/ replacement of the back panel (430). In other words, once a user "pulls" on the flap (620), the fasteners (625) must release so that the opening (610) may be exposed. Conversely, the present application requires "welds" that will not separate when force is applied to the flap. Otherwise, the purpose of the flap handle to be used for assisting in the application of the article is destroyed. Such a construction is well within the interpretation that one skilled in the art would reach in light of the specification.

With regard to Claims 5-6 and 25-26, the Office states, "LaVon discloses the flap stratum is a portion of the belt zone that has been folded away from the wearer-facing surface of the article at hinge points [hinge point is disposed at a location where perimeter 710 meets adhesive/lateral weld 720] (page 14, paragraph 0123, lines 6-8 and figure 10) and wherein the flap comprises a multiple construction wherein the stratum is discrete (figure 10)." The Office has failed to clearly describe how LaVon teaches each and every element of the present claims. "The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." 37 C.F.R. § 1.104(c)(2). In rejecting Claim 1 (upon which Claims 5-6 and 25-26 depend), the Office relies on the embodiment in Fig. 7 of LaVon which includes flap (620). In the present rejection, the Office relies upon the embodiment in Fig. 10. The embodiment in Fig. 10 does not include the flap (620) as shown in Fig. 7. It is unclear what structure in Fig. 10 the Office is construing to be the flap as required in Applicant's

Appl. No. 10/774,768
Docket No. 9490
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claims. Furthermore, it is unclear from Fig. 10 and the passage on page 14, paragraph [0123] where the longitudinal welds are taught.

With regard to Claim 24, the Office states, "LaVon discloses blocking layers 670 forms (sic) cut through a portion of the stratum (figure 9 and page 13, paragraph 0117)." It is unclear what the Office considers as the flap in Figure 9. Claim 24 is dependent upon Claim 5 which is dependent upon Claim 1. In the rejection of Claim 1, the Office points to flap (620) as shown in Figure 7 as teaching Applicant's flap handle. However, for the present claim, the Office relies on Figure 9 which is structurally different from Figure 7. Specifically, Claim 9 does not include a flap (620) as shown in Figure 7. As a result, the Office has failed to clearly describe how LaVon teaches each and every element of the present claim.

With regard to Claim 28, the Office states, "LaVon discloses . . . the handle laterally spans the width of the sidewall (figure 7)." Applicant asserts that no such conclusion can be drawn from Fig. 7. The Office, with regard to Claim 1, states that LaVon teaches a sidewall comprising an ear or a panel. The Office points to Figs. 1 and 3 for support. However, no structure is specifically identified as being the sidewall, ear, or panel. As a result, Applicant is uncertain how LaVon teaches a handle laterally spanning the width of the sidewall when the sidewall is not clearly identified. Furthermore, it appears that the flap (620) of LaVon is laterally centered on the absorbent article (600).

Claims not specifically addressed are all believed to be dependent from Claim 1. Since Claim 1 is patentably distinct over LaVon, the dependent claims are likewise patentably distinct over LaVon.

In light of the arguments presented above, Applicant requests withdrawal of the rejection.

Claims 1, 6, 27, and 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Application No. 11-104,180 to Yoshikazu et al. (hereinafter "Yoshikazu"). In support of the rejection, the Office states:

Yoshikazu discloses an absorbent pants-type/pull-on diaper comprising a chassis, a sidewall disposed adjacent the chassis to form leg openings and a waist edge and at least one handle/flap comprising a stratum 15, wherein the flap 3a forms a finger-gripping gap between the discrete stratum 15 and the chassis, wherein the flap is joined to the garment-facing surface by

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Docket No. 9490
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Customer No. 27752

adhesive welding means and wherein the handle is disposed adjacent to the sidewall, said sidewall comprises multiple ears 11 (see figures and entire abstract).

Yoshikazu is directed to a disposable diaper that can be easily pulled up by the fingertips. *Abstract.* Yoshikazu discloses "several fingertip engaging parts that are arranged in a row separated and in parallel are provided." Paragraph [0006]. Yoshikazu further discloses, in one form, that "the aforementioned finger tip engaging parts are formed of a folded part of the aforementioned first outer face sheet which is folded and opens towards the aforementioned crotch lower area and window parts of the aforementioned second outer face sheet that is adjacent to the aforementioned folded part which open outward. Paragraph [0006]. Yoshikazu discloses that the diaper is constructed of a lamination (1) consisting of an inner face sheet (2), an outer face sheet (3), and a liquid absorbing core (4) between. Paragraph [0009]. The lamination is intermittently bonded by heat-fusion means along the side edges (11) to form a waist opening and a pair of leg openings.

Applicant traverses the rejection on grounds that Yoshikazu fails to teach each and every limitation of the present claims. Claim 1 includes the limitation of "wherein said flap is joined to the garment-facing surface of the article by opposing longitudinal welds disposed proximate to opposing distal longitudinal edges of the flap." The Office asserts that Yoshikazu teaches "the flap is joined to the garment-facing surface by adhesive welding means." However, Applicant can find no support for such an assertion. Furthermore, Yoshikazu provides little teaching on how the "flap" (i.e., folded part 15) is configured beyond being a folded portion of the first outer face sheet. Paragraph [0007].

With regard to Claim 29, Applicant fails to find any passage in Yoshikazu teaching that the sidewall comprises a single ear or panel.

In light of the arguments presented above, Applicant requests withdrawal of the rejection.

Rejection Under 35 USC §103

Claims 21-22 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaVon. In support of the rejection, the Office states:

Lavon does not expressly disclose instructions. Since the instructions (printed matter) are not functionally related to the structure of the kit, the

Page 7 of 8

Appl. No. 10/774,768
Docket No. 9490
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Customer No. 27752

claimed invention does not patentably distinguish from the prior art reference(s). In order for the instructions (printed matter) to impart patentability to the kit, there must be a new and non-obvious functional relationship between the printed matter and some element of the kit. Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. *In re Ngai*, 387 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004). See also MPEP 2121.01 (III) (sic – 2112.01).

Applicant traverses the rejection.

The Office's reliance on *Ngai* is misplaced. *Ngai* involved a claim where the only difference between the claim and the prior art was the content of the instructions. *Ngai*, 387 F.3d at 1338. In the present rejection, the Office has conceded that LaVon does not expressly disclose instructions. Furthermore, Applicant has failed to find a passage in LaVon teaching a kit. Since the present rejection does not share the same basic fact pattern as presented in *Ngai*, Applicant asserts that the teachings of *Ngai* are inapplicable to the present rejection. As a result, the Office has failed to establish a *prima facie* case of obviousness because all of the claim limitations have not been taught.

Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. §§ 102(b) and 103(a). Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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